CONTRACTS IN RESTRAINT OF TRADE. — The case of *Thorsten Nordenfelt* v. *The Maxim Nordenfelt Co.* (1894, Ap. Cas. 535) comes in happy seasons to clear up the subject of contracts in restraint of trade, which the course of recent judicial opinion in England had left in a rather dubious condition. In *Rousillon* v. *Rousillon* (1880, 14 Ch. D. 351), Fry, J., said: "It is urged that over and above the rule that the contract shall be reasonable, there exists another rule, namely, that the contract shall be limited as to space. . . . I adhere to those authorities which refuse to recognize this latter rule." In *Davies* v. *Davies* (1887, 36 Ch. D. 359), the court went out of their way to discuss this point, though not involved in the decision of the case. Cotton, L. J., said the rule was that "if a covenant is in any way limited, either sufficiently as regards space, or sufficiently as regards time, then it will not be considered as an absolute restraint of trade, and then the question as to whether the limit is reasonable will come into consideration." But "the law does not allow an absolute covenant to give up trade." Fry, L. J., however, stuck to his old view, while Bowen, L. J., did not express a decided opinion either way. In *Badische Anilin und Soda Fabrik* v. *Schott, Segner, & Co.* (1892, 3 Ch. D. 447), the court showed its strong approval of the view advanced by Cotton, L. J., in *Davies* v. *Davies*.

In *Nordenfelt* v. *Nordenfelt Co.*, however, although the only point involved was whether a covenant not to engage in a certain occupation for twenty-five years was good, the Lords not only decided that it was, but also asserted that the only test was reasonableness, — *i. e.*, that the covenant should not exceed what the protection of the covenantee required. Lord Herschell says (p. 548): "I think that a covenant . . . must be valid where the full benefit of the purchase cannot be otherwise secured to the purchaser." Lord Ashbourne remarks (p. 558): "I do not regard the distinctions of any practical importance, because, as in the present case, the inquiry as to the validity of all covenants in restraint of trade must now ultimately turn upon whether they are reasonable, and whether they exceed what is necessary for the fair protection of the covenantees." This sentiment appears to have been that of most of the Lords, and may now, it would seem, be regarded as the settled law of England.

SELF-DEFENCE. — *State* v. *Evans*, 28 S. W. R. 8 (Mo.), decides that one whose life has been threatened may arm himself and knowingly go into the vicinity of the threatening party; and that the mere fact that he does so in the expectation of being attacked will not deprive him of the right to take life in self-defence.

The decision seems a sound one. A man may surely go where legitimate business calls him, although he knows he is likely to be molested. The court says, however: "The fact that defendant expected an attack did not abate one jot or tittle his right to arm himself in his own proper defence, nor to go where he would, after thus arming himself." Might not the right to go where his enemy was, in such a case, be made dependent on whether some legitimate business called him there? It is said that the right to take life in self-defence is founded on necessity (Foster, C. L. 273). Is there any real necessity when the threatened party seeks out his enemy for the mere purpose of provoking by his presence an execution of the threat? The principle that a conflict for blood should, if possible, be avoided seems a humane and safe one, and

the text-books and cases are not without *dicta* in its support (1 Bish. New Crim. Law, § 869; *Com.* v. *Crum*, 58 Pa. 9; *Gilleland* v. *State*, 44 Tex. 356).

The following passage shows that some such idea was present to the minds of the old lawyers, and is of interest in this connection: "But if one were threatened that if he should come to such a market, or into such a place, he should there be beaten, in that case he could not assemble persons to help him go there in personal safety, for he need not go there, and he may have a remedy by surety of the peace" (Anon. Y. B. 21 Hen. VII. 39, pl. 50).

COMPENSATION FOR IMPROVING ANOTHER'S PROPERTY WITHOUT REQUEST. — The Supreme Court of North Carolina, in *Gaskins* v. *Davis*, 20 S. E. R. 188, decides that one who cuts logs on another's land by mistake cannot, when they are retaken by the lawful owner, claim compensation for their increase in value caused by his having transported them to market. The action was by the lawful owner for damages for cutting other logs, and defendant sought to counter-claim.

Had the mistaken wrongdoer sufficiently changed the nature or enhanced the value of the logs to acquire title to them by accession, the measure of damages would have been limited to the value of the logs at the time of the conversion. The same rule would have applied in many jurisdictions if there had been no accession, and the real owner had brought trover for the logs instead of retaking them. In both cases defendant would, in effect, have been compensated for the increase in value which his labor had brought about. It seems unfortunate that in the single case where there has been no accession, and the logs are retaken by the owner, the right to compensation should be denied. In *Isle Royal Mining Co.* v. *Hertin*, 37 Mich. 332, a similar log case, the claim was denied because to allow it would be to offer a "premium to heedlessness and blunders." The rule of damages in accession and trover seems equally lenient to blunderers, and has not been found disastrous in practice.

It is rather difficult to distinguish the cases on principle from those in which a right to compensation in equity has been allowed for improvements to land made under a mistaken belief of ownership (*Albea* v. *Griffin*, 2 Dev. & B. Eq. 9 (N. C.); Rodman, J., in *Potter* v. *Mardre*, 74 N. C. 40). A decision to much the same effect was made in *Bright* v. *Boyd*, 1 Story, 478; 2 Story, 608. And see Keener, Quasi-Contracts, 385, 386.

The analogy was noticed by the court in the principal case.

COMPARATIVE NEGLIGENCE. — The REVIEW has received a letter from Mr. E. Parmalee Prentice, of Chicago, kindly calling attention to the fact that in the note on Comparative Negligence, in the January number, the future of that doctrine was suggested in a somewhat more cautious way than the situation requires. For this view he cites *Railway Co.* v. *Hession*, 37 N. E. R. 905–907; *City of Lanark* v. *Dougherty*, 38 N. E. R. 892; *Iron Co.* v. *Martin*, 115 Ill. 358; *Wenona Coal Co.* v. *Holmquist*, 38 N. E. R. 946, and adds that ever since the Martin case that rule has been regarded by the Chicago Bar as discredited. Whatever weight may be given to the earlier cases, the opinion of the local bar on this question,